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June 26, 2001

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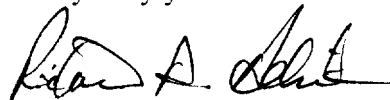
Ms. Magalie R. Salas
Secretary
Federal Communications Commission
Portals II, Filing Counter, TW-A235
445 12th Street, S.W.
Washington, D.C. 20554

**Re: MM Docket No. 98-159
RM-9290
Wallace, Idaho and Bigfork, Montana**

Dear Ms. Salas

Submitted on behalf of Alpine Broadcasting Limited Partnership, licensee of FM Broadcast Station KSIL, Wallace, Idaho, are an original and four copies of its Opposition to Petition for Reconsideration relating to Report and Order, DA 01-1200, released May 11, 2001, in the above-captioned FM allocation matter. Any questions regarding this matter should be addressed to undersigned counsel.

Very truly yours



Richard A. Helmick

cc: J. Bertron Withers, Jr., Esq. (FCC, Rm 3-A264)
Robert Lewis Thompson, Esq.
George R. Borsari, Jr., Esq.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

In the Matter of)
) MM Docket No. 98-159
Amendment of Section 73.202 (b),) RM-9290
Table of Allotments, FM Broadcast Stations)
(Wallace, Idaho and Bigfork, Montana))

To: Chief, Allocations Branch, Mass Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Alpine Broadcasting Limited Partnership ("Alpine"), licensee of Station KSIL(FM), Channel 264C2, Wallace, Idaho, and petitioner in the above-captioned rule making proceeding to reallocate its frequency from Wallace, Idaho, to Bigfork, Montana and modify its authorization accordingly, hereby opposes the June 11, 2001 "Petition for Reconsideration" ("Petition") filed by Bee Broadcasting, Inc. ("BBI"). The Petition challenges the *Report and Order*, DA 01-1200, released May 11, 2001, which granted Alpine's reallocation request. As Alpine will now demonstrate, the *Report and Order* should be affirmed.

1. Alpine commends the *Report and Order* as a legally sound "real world" disposition of the issues raised herein. The *Report and Order* addresses current allocations and engineering realities, rather than stale facts, and it does so in a forthright and exemplary fashion. Moreover, and most importantly, after almost three years of pendency,^{1/} the *Report and Order* refuses to indulge in the kinds of specious objections and procedural dilatoriness that have characterized BBI's

^{1/} The *Notice of Proposed Rulemaking* herein, 13 FCC Rcd 16278, was released on September 4, 1998.

participation in this proceeding since the beginning. In its Petition, BBI urges that: (a) Alpine's outdated "gain/loss" study cannot be supplanted by a Commission staff study; (b) leaving 150 persons with only one fulltime aural service should outweigh providing a first reception service to 55 persons and a first transmission service to Bigfork (1990 pop. 1461); and (c) the *Report and Order* erred in treating this proceeding as reallocating Wallace, Idaho's Channel 248C2 (instead of Channel 248C) frequency to Channel 264C at Bigfork, Montana without first issuing a Further Notice of Proposed Rulemaking and obtaining more comments. BBI is wrong on all three counts.

2. At the outset, Alpine notes that on February 26, 1999, BBI withdrew "its Comments in Opposition and its Reply in Opposition to the referenced Rule Making proceeding".^{2/} Under these circumstances, BBI should be required to explain how it is still a party to this proceeding, why it is not estopped from challenging the *Report and Order*, and why its Petition should not be struck under Section 1.52 of the Commission's Rules as "sham and false" and "interposed for delay". Falsely accusing Alpine of engaging in "gamesmanship" in this proceeding (Petition at 4 and 7), in truth BBI's pleading should be summarily dismissed as a strike pleading. *See Radio Carrollton*, 69 FCC 2d 1139, 1150 (1978). Whether an entity's continued participation in a proceeding has "the primary and substantial purpose of delay" is the "crucial consideration" when measuring the *bona fides* of a pleading. *Id.* BBI's Petition fails that test.

3. Assuming arguendo that BBI's Petition is not dismissed, Alpine turns first to BBI's "gain/loss" study argument. Simply stated, there is no legal basis for BBI's attack on the Commission staff's preparation of its own "gain/loss" study in order to ensure a realistic and up-to-date evaluation of potential audience gains and losses in this proceeding. BBI cites no case precedent foreclosing the substitution of a Commission staff study, nor does BBI criticize the study's

^{2/} See BBI's February 26, 1999 "Withdrawal of Opposition" in this proceeding at 1.

accuracy. Alpine agrees with the *Report and Order* that reasoned decisionmaking in FM channel rulemaking proceedings requires the Commission to look at the socio-economic effects of the actual engineering changes that its decision will make – not the theoretical situation that existed three years earlier. See also Paragraphs 5 and 6 below. To decide this case based on stale and inaccurate facts, as BBI urges, would turn this proceeding into a meaningless charade. BBI's objection should be denied.

4. As to BBI's concern for 150 persons who will have only one fulltime radio service if Station KSIL(FM) is reallocated to Bigfork, the *Report and Order* (at ¶10) correctly labeled that situation as "*de minimis*" when juxtaposed against the 55 persons who will be gaining a first aural service because of the reallocation. BBI's reliance on *Wallace, Idaho and Lolo, Montana*, MM Docket No. 97-303, 14 FCC Rcd 21110 (Mass Media Bur. 1999), is misplaced. There, the Commission denied a proposal to downgrade the channel allotment of an unbuilt Class C2 station to Class C3 and move the allotment from Wallace to Lolo. The Commission found that the proposed Lolo station would provide a 70 dBu city grade signal not only over all of Lolo, but also over the entirety of the Missoula, Montana Urbanized Area and there was not sufficient independence of Lolo from Missoula to justify a first local service preference for Lolo. Since Alpine's Bigfork allotment proposal does not trigger urbanized area coverage and a corresponding need to justify a first local transmission service preference, the *Wallace, Idaho and Lolo, Montana* decision has no discernable relevance to this proceeding and does not foreclose grant of Alpine's proposed reallocation, which has significantly different facts and effects.

5. Finally, as to the claim that the Commission erred in not requesting a new set of rulemaking comments, again BBI fails to provide any supporting case precedent. While the Commission does sometimes issue a Further Notice of Proposed Rule Making when new

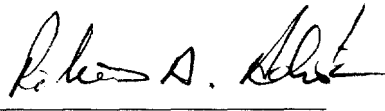
communities or different final frequencies are introduced into a reallocation proceeding, *see, e.g., Canovanas, Culebra, et al., Puerto Rico*, 7 FCC Rcd 3324 (Mass Media Bur. 1992), neither of those changed circumstances is present in the instant case. The fact that Alpine's Wallace authorization was modified and constructed as a Class C2 station on Channel 248, instead of a full Class C facility, does not have decisional significance, requiring further rulemaking comments, as to the proposed allotment of Channel 264C in this proceeding. It simply requires preparation of an updated gain/loss study, which the Commission staff provided.

6. Stated differently, in FM channel rulemaking proceedings, the essential and proper focus is upon the impact of proposed changes in the Table of Allotments and upon counterproposals pertaining to the new allotment, not upon critiquing the classification of the old allotment. Nothing useful would come out of BBI's proposed Channel 248C2 inquiry, except further delaying the conclusion of this proceeding, which is surely BBI's inappropriate goal. The Commission should not allow its FM rulemaking process to be abused by BBI's antics.

WHEREFORE, in light of the foregoing Alpine respectfully requests that the Commission should dismiss or deny BBI's Petition for Reconsideration and should affirm the *Report and Order*.

Respectfully submitted

ALPINE BROADCASTING LIMITED PARTNERSHIP

By: 

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Its Attorneys

Dated: June 26, 2001

CERTIFICATE OF SERVICE

I, Barbara J. McKeever, hereby certify that on June 26, 2001, a copy of the foregoing **"Opposition to Petition for Reconsideration"** was sent by First Class mail, postage prepaid, to the following:

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